

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES KEVIN RUPPERT,

Plaintiff,

v.

No. CIV 13-54 JAP/WPL

LIEUTENANT JUSTIN ROGERS,
Security Threat Intelligence Unit,
SARGEANT TORELLA, SARGEANT
RIVERA, Disciplinary, and LIEUTENANT
J. VIGIL, Disciplinary Grievance Officer,

Defendants.

**MEMORANDUM OPINION AND ORDER
DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

On February 21, 2014, Plaintiff James Kevin Ruppert (Mr. Ruppert) filed a NOTICE OF APPEAL (Doc. No. 46) from the Court's MEMORANDUM OPINION AND ORDER (Doc. No. 42), that overruled Mr. Ruppert's objections to a previous Court Order and that denied a number of motions filed by Mr. Ruppert. The Court's MEMORANDUM OPINION AND ORDER (Doc. No. 42) was not a final decision that ended the litigation. *See Catlin v. United States*, 324 U.S. 229, 233 (1945) (A final decision "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.") Stated differently, this Court has not yet entered a final decision regarding all of Mr. Ruppert's claims.

On March 6, 2014, Mr. Ruppert filed a "MOTION FOR LEAVE TO PROCEED" in forma pauperis on appeal.¹ (Doc. No. 49.) The MEMORANDUM OPINION AND ORDER (Doc. No. 42) from which Mr. Ruppert appeals is not a final, appealable order. Accordingly, the

¹ Mr. Ruppert is incarcerated, appears pro se, and is proceeding in forma pauperis in this 42 U.S.C. § 1983 action. (Doc. No. 4.)

Court certifies that Mr. Ruppert's appeal is not taken in good faith. *See United States v. Hornung*, 785 F.2d 868 (10th Cir. 1986) (denying application to proceed in forma pauperis on appeal where district court's order was not an appealable decision); *Javor v. Brown*, 295 F.2d 60, 61 (9th Cir. 1960) (finding that a plaintiff could not proceed in forma pauperis on appeal where district court certified in writing that the appeal was not taken in good faith based on a purported appeal from a non-final order). *See also* 28 U.S.C. § 1915(a)(3) ("appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith"); Fed. R. App. P. 24(a)(3)(A) (party who was permitted to proceed in forma pauperis in the district court action may proceed on appeal in forma pauperis unless the district court certifies that the appeal is not taken in good faith).

IT IS THEREFORE ORDERED that Mr. Ruppert's MOTION FOR LEAVE TO PROCEED in forma pauperis on appeal in accordance with 28 U.S.C. § 1915 (Doc. No. 49) is DENIED.



SENIOR UNITED STATES DISTRICT JUDGE